REMARKS/ARGUMENTS

The Office Action of April 21, 2005, has been carefully reviewed and this response addresses the Office Action's concerns stated in the Office Action. All objections and rejections are respectfully traversed.

I. UPDATES TO THE SPECIFICATION

On page 2, in paragraph 3, the Office Action states that examiner requests Applicant to update status of any related cases as mentioned in the disclosure. Applicant has herein amended the specification to update information with respect to the related cases about which information has changed since the filing of the case.

II. STATUS OF THE CLAIMS

Claims 1-4, 6-16, and 18-36 are still pending in the application.

Claims 1, 7, 9, 14, 15, 21, 23, 28, and 29 have been amended to further define the invention. No new matter has been added.

Claims 2-4, 6, 8, 10-13, 16, 18-20, 22, 24-27, and 30-33 have been amended to provide formatting consistency.

Claims 5 and 17 have been previously cancelled without prejudice.

Claims 34-36 have been added to further define the invention. Support for the new claims can be found in Applicant's specification, page 6, line 1 to page 7, line 5.

Claims 1-4, 6-16 and 18-33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ballantine et al, U.S. Patent No. 6,446,123 issued September 3, 2002 (Ballantine) in view of Sheets et al., U.S. Patent No. 6,816,905 issued November 9, 2004 (Sheets).

III. CLAIM REJECTIONS UNDER 35 U.S.C. § 103(a)

On pages 3-7 of the Office Action, the Office Action has rejected claims 1-4, 6-16, and 18-33 under 35 U.S.C. § 103(a) as being unpatentable over Ballantine in view of Sheets.

Applicant respectfully points out that Ballantine issued on September 3, 2002, almost two years after the filing date of the present application, December 11, 2000. Applicant is investigating the possibility of swearing behind the cited reference and respectfully reserve the right to file a petition under 37 C.F.R. § 1.131.

Applicant further respectfully points out that Sheets issued on November 9, 2004, almost four years after the filing date of the present application, December 11, 2000. Still further, Sheets was filed on November 10, 2000, a month before the filing date of the present application. Applicant is investigating the possibility of swearing behind the cited reference and respectfully reserve the right to file a petition under 37 C.F.R. § 1.131.

In order for a rejection under 35 U.S.C. §103 to be sustained, the Office Action must establish a prima facie case of obviousness. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Applicant has amended independent claims 1, 9, 15, 23, and 29, and has added independent claim 34, to further define the present invention. Support for the amendments can be found in Applicant's specification page 9, lines 15-17. Applicant respectfully asserts that the previously presented claims, as amended, and the new claim are patentable over the combination of Ballantine and Sheets because:

(1) Neither Ballantine nor Sheets alone nor their combination teaches or suggests Applicant's claimed method, system, and computer product for automatically allocating additional hardware resources to a computer having a plurality of hardware resources including the steps or elements of monitoring hardware resources to collect historical data, automatically analyzing, according to an analysis technique specific to each selected one of the hardware resources, the historical data (Amended claims 1, 9, 15, 23, and 29).

(2) Neither Ballantine nor Sheets alone nor their combination teaches or suggests Applicant's claimed providing a signal based on the automatic analysis, and automatically updating the analysis technique based on the signal (Amended claims 1, 9, 15, 23, and 29).

(3) Neither Ballantine nor Sheets alone nor their combination teaches or suggests a polling gateway (New claim 34).

(4) Neither Ballantine nor Sheets alone nor their combination teaches or suggests that the polling gateway receives a polling interval, a network element identifier, and a polling parameter, and polls the network element identified by the network element identifier to obtain a value for at least one polling parameter, where the polling gateway polls the network element according to the polling interval (New claim 34).

(5) Neither Ballantine nor Sheets alone nor their combination discloses a central management system communicatively coupled to a polling gateway, wherein the central management system can automatically receive specific information that results from polling a network element and automatically process the specific information according to an analysis technique that can be automatically updated by the central management system, and wherein the central management system can automatically predict a resource problem with respect to a resource associated with the network element, and wherein the polling gateway can automatically correct the resource problem (New claim 34).

(6) Neither Ballantine nor Sheets alone nor their combination discloses determining a cost associated with correcting a resource problem (New claim 35).

(7) Neither Ballantine nor Sheets alone nor their combination discloses at least one analysis technique being specific to a particular network element (New claim 36).

On pages 3-4 and 6 of the Office Action, in paragraphs 6, 13, 19, 21, and 22, with respect to independent claims 1, 9, 15, 23, and 29,

(1) On page 3, the Office Action states that Ballantine discloses the invention substantially as claimed including the method of automatically allocating additional hardware resources to a computer having a plurality of hardware resources, said method comprising: (a) monitoring use of selected ones of said hardware resources by the computer to obtain

historical data pertaining to the historical availability to the computer of each said monitored hardware resource (i.e. monitoring tool for anticipating the performance of components based on the received information (520 FIG. 5; Abstract; and col. 9, lines 27-37); (b) automatically analyzing said obtained historical data to arrive at a prediction of a future level of availability of a monitored hardware resource (i.e. predicting potential problem based on the anticipated performance of components) (540, FIG. 5; col. 1, lines 49-67); and (c) providing a signal when said prediction of the future level of availability of the monitored resource fails to meet an availability threshold (i.e. activate alarm) (col. 5, lines 53-56 and col. 10, lines 17-20).

Applicant has amended independent claims 1, 9, 15, 23, and 29. Support for the amendments can be found in Applicant's specification, page 9, lines 15-17 and page 10, lines 7-14. Applicant respectfully points out that Ballantine teaches away from Applicant's claimed automatically updating the analysis technique based on the signal.

Ballantine states that user input, network management tools, and manufacturer specifications set thresholds for network performance (col. 5, line 9 and col. 6, lines 12-24). Ballantine states that network management tools set network alarm levels that are activated when network thresholds are exceeded (col. 5, lines 53-54). Thus, Ballantine provides great detail surrounding the acquisition and use of thresholds, but no where does Ballantine teach or suggest an analysis technique specific to a resource that can be selected based on a signal emanating from monitoring the resource as claimed by Applicant.

The lack of information provided by Ballantine concerning how the network management tool and the software management tool of Ballantine determine whether to use analysis techniques such as, for example, regression or moving average, and if these analysis techniques can change, leads Applicant to believe that any analysis techniques of Ballantine are static. Applicant claims just the opposite.

(2) On page 3, the Office Action states that Ballantine fails to disclose without user intervention, responding to the signal by automatically reserving or ordering an additional physical hardware resource that is not in the computer when the signal is provided and which is to be later manually physically added to the computer after the reserving or placing of an order.

(3) On page 4, the Office Action states that Sheets discloses without user intervention, responding to the signal by automatically reserving or ordering an additional physical hardware resource that is not in the computer when the signal is provided (i.e. automatic and dynamic reallocation of servers) (Abstract; col. 6, lines 30-39) and which is to be later manually physically added to the computer after the reserving or placing of an order (col. 2, line 63 – col. 3, line 20).

Applicant respectfully points out that the combined teaching of Sheets teaches away from Applicant's claimed invention. A goal of Sheets is to improve on the way in which physical resources of the server farm are managed (col. 6, lines 14-16). This would presumably include improving on or eliminating the manual process set out in the background section in Sheets (col. 3, lines 5-17). The solution that Sheets provides to the problems set out in the background section is an automatic and dynamic reallocation of servers that is accomplished by setting initialization pointers (Abstract), but that nowhere includes manual, physical reconfiguration. Sheets, therefore, teaches away from Applicant's claimed automatically reserving an additional hardware resource which is later to be manually physically added to the computer.

(4) On page 4, the Office Action states that it would have been obvious to one of ordinary skill at the time of the invention to combine the teaching of Ballantine and Sheets because Sheets' teaching of adding additional resource would allow the system to be more scalable for resource usage as demand increased.

Applicant asserts that Ballantine teaches away from the motivation to combine Ballantine and Sheets stated by the Office Action because the system of Ballantine is organized around the repair of network faults. For example, Ballantine states that the amount of time needed to correct the potential network problem includes, for example, the time needed to order and install a part that needs replacing (col. 7, lines 13-16). The addition of Sheets does not correct this deficiency in Ballantine. Returning to the requirements to establish a prima facie obviousness rejection, there is no suggestion or motivation, either in the Ballantine itself or in the knowledge generally available to one of ordinary skill in the art, to modify Ballantine. The system of Ballantine manages telephonic resources. Ballantine presents a solution for managing telephonic resources that is amenable to such a system. No

automatic reconfiguration whatsoever is suggested because scheduling proactive maintenance based on repairperson availability, etc. (Abstract) is more suitable to the telephonic situation. There is no suggestion whatsoever to automatically replace a failing resource with another resource. Therefore, because there is no suggestion nor motivation to combine Ballantine and Sheets, Applicant respectfully requests that the rejection be withdrawn.

Applicant asserts that dependent claims 2-4, 6-8, 10-14, 16, 18-22, 24-28, and 30-33 are deemed patentable due at least to their dependence from allowable independent claims. These claims are also patentable due to their recitation of independently distinguishing features as provided below.

(5) On pages 5-6, in paragraphs 11, 18, 20, and 21, the Office Action states that, as per claims 7, 14, 21, and 28, Ballantine discloses analyzing all availale applications as a function of at least on system resource.

Applicant has amended claims 7, 14, 21, and 28 to further define the invention. In the cited passage, Ballantine states that the health manager software tool reads information from a plurality of sources, including company policy, maintenance practice information, general information, and additional information. This information is provided by a user or by files, and could even be collected by software in the system of Ballantine, but is ultimately a database of information. Applicant, on the contrary, claims that the step of monitoring comprises analyzing all available applications with respect to the utilization by the available applications of the monitored hardware resources. Computer systems typically execute applications that require resources such as memory to complete their work. Applicant claims monitoring the applications in order to gather further information to assist in the analysis (and thus prediction) process. Nowhere do either Ballantine or Sheets teach or suggest gathering monitoring applications for resource requirements.

Since Ballantine and Sheets, separately or in combination, do not either teach or suggest each and every element of Applicant's independent claims 1, 9, 15, 23, and 29 (and claims 2-4, 6-14, 16, 18-22, 24-28, and 30-33, which depend therefrom), Applicant's independent claims 1, 9, 15, 23, and 29 (and claims 2-4, 6-14, 16, 18-22, 24-28, and 30-33, which depend therefrom) are not made obvious by the combination of Ballantine and Sheets. A rejection under 35 U.S.C. § 103(a) is inappropriate.

Applicant asserts that independent claims 1, 9, 15, 23, and 29 (and claims 2-4, 6-14, 16, 18-22, 24-28, and 30-33, which depend therefrom) are now in condition for allowance. Applicant respectfully requests the withdrawal of the rejection under 35 U.S.C. § 103(a) with regards to independent claims 1, 9, 15, 23, and 29 (and claims 2-4, 6-14, 16, 18-22, 24-28, and 30-33, which depend therefrom) for the reasons set forth above.

IV. CONCLUSION

Independent claims 1, 9, 15, 23, 29, and 34 are believed to be in condition for allowance. Applicant asserts that all dependent claims depend upon allowable independent claims, and are therefore also believed to be in condition for allowance.

Applicant respectfully points out that Ballantine issued on September 3, 2002, almost two years after the filing date of the present application, December 11, 2000. Applicant is investigating the possibility of swearing behind the cited reference and respectfully reserve the right to file a petition under 37 C.F.R. § 1.131.

Applicant further respectfully points out that Sheets issued on November 9, 2004, almost four years after the filing date of the present application, December 11, 2000. Still further, Sheets was filed on November 10, 2000, a month before the filing date of the present application. Applicant is investigating the possibility of swearing behind the cited reference and respectfully reserve the right to file a petition under 37 C.F.R. § 1.131.

Applicant has added claims 34-36, one independent claim in excess of 3 ($200 – large entity) and two dependent claims, for a total of three claims in excess of 20 ($150 – large entity). The Commissioner for Patents is hereby authorized to charge this fee and any additional fees or to credit overpayment to Deposit Account No. 50-1078.

The following information is presented in the event that a call may be deemed desirable by the Examiner:

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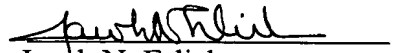
Respectfully submitted,
Thomas C. Harrop, Applicant

Date: July 21, 2005

By: 
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